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OFFICE OF PETITIONS

In re Application of :
Tanumihardja et al. :
Application No. 09/894,278 : ON PETITION
Filed: 27 June, 2001 :
Attorney Docket No. 0805-003- :
003-SEED :

This is a decision in reference to the petition under 37 CFR 1.181 filed on 10 April, 2006, to withdraw the holding of abandonment.

The petition is **DISMISSED**.

This application became abandoned on 27 August, 2005, for failure to submit a timely response to the non-final Office action mailed on 26 May, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 31 January, 2006.

Petitioners assert that the Office action mailed on 26 May, 2005, was never received. Specifically, petitioners assert that applicants' file was acquired by practitioners Berkeley Law and Technology Group (hereinafter "Berkeley") from Seed Intellectual Group, the correspondence address of record, on or about 31 May, 2005. A review of the file was conducted on 2 June, 2005, and the Office action mailed on 26 May, 2005, was not located in the file. Petitioners aver that an additional search of the file jacket and docket record was conducted on 7 February, 2006, after the file was transferred from Berkeley to current attorney Dale

Cook's office, and the Office action mailed on 26 May, 2005, was not located therein.

Petitioners have also provided copies of docket reports as well as a statement by Susan Bollinger, Intake Manager for Berkeley, and Jennifer Badley, presumably also an employee of Berkeley, stating that the Office action was not received.

The showing of record is insufficient to withdraw the holding of abandonment.

A review of the written record indicates no irregularity in the mailing of the Notice, and in the absence of any irregularity there is a strong presumption that the Notice was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ This showing may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

It is noted that the Office action mailed on 26 May, 2005, was mailed to Seed Intellectual Property Group PLLC, 701 Fifth Avenue, Suite 6300, Seattle, WA 98104-7092. However, in view of petitioner's statement that the file was "transferred" to Berkeley on 31 May, 2005, it is not clear if the correspondence address had changed, or if petitioners were still receiving mail at the address of record on or after 31 May, 2005. Rather, the showing of record suggests, based on petitioners' statement that the "physical file" was "acquired," that the docketing and mail receipt was no longer occurring at the correspondence address. As such, it is unclear whether the docket records filed with the present petition reflect mail received from the correspondence address of record or some other address.

¹ See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

It appears, therefore, that the Office action may have been properly mailed to petitioners' address of record but not received due to petitioners' changing counsel, or was lost after receipt due to counsel's relocation. Any renewed petition to withdraw the holding of abandonment must include a showing that petitioners were, in fact, receiving mail at the correspondence address of record at the time the Office action mailed on 26 May, 2005, was mailed, **and for a reasonable time thereafter.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**²

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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² 37 CFR 1.181(f).